

THE LEGISLATOR AND THE CODE OF GOVERNMENTAL ETHICS

Conflicts of Interest, Prohibited Conduct, Financial Disclosure, Post-Service Restrictions

The Constitution of Louisiana declares that "Legislative office is a public trust, and every effort to realize personal gain through official conduct is a violation of that trust" (*Const. Art. III, §9*). This provision in the Louisiana Constitution also mandates the legislature to enact a code of ethics prohibiting conflict between public duty and private interests of members of the legislature. In addition, the constitution requires that the legislature enact a code of ethics for all officials and employees of the state and its political subdivisions (*Const. Art. X, §21*). The Code of Governmental Ethics fulfills both of the above constitutional mandates by providing a comprehensive code.

Every elected official, appointed official, and public employee is required each year to receive a minimum of one hour of education training on the code of ethics. Every elected official is additionally required to receive a minimum of one hour of education and training on the Campaign Finance Disclosure Act during the official's term of office (*R.S. 42:1170*).

The Board of Ethics is charged with administering and enforcing the code of ethics with respect to elected officials and employees of the state and its political subdivisions, including legislators. An alleged ethics code violation will be investigated by the board upon receipt of a sworn complaint or upon a two-thirds vote of the board's membership. The Ethics Adjudicatory Board conducts hearings in connection with alleged violations of the code. Information about the Board of Ethics, its opinions, and its agendas is available at the board's website (www.ethics.state.la.us), and information about the Ethics Adjudicatory Board, its members, rules, processes, and decisions is also available on the Internet (www.adminlaw.state.la.us/ethics.htm).

The Code of Governmental Ethics contains provisions that apply specifically to legislators, to elected officials, to public employees, and to all public servants (a term that includes elected officials, appointed officials, and public employees). Examples of important provisions are discussed below (the examples are presented from the standpoint of the legislator, but it should be noted that many of the provisions apply not only to legislators but to other elected officials, appointed officials, and public employees as well). This discussion is necessarily brief and does not fully reflect the law. The ethics code is included in *A Compilation of Selected Provisions Relative to Conflicts of Interest and Ethics of Public Officers and Employees*, which is made available to all members of the House of Representatives. For more information regarding these provisions of law, contact the staff of the House and Governmental Affairs Committee at (225) 342-2403 or the Board of Ethics at (800) 842-6630.

GIFTS

A legislator is prohibited from soliciting or receiving any thing of economic value as a gift from a paid lobbyist or person who has or is seeking to obtain a contractual or business relationship with the legislator's agency. A legislator is also generally prohibited from receiving any thing of economic value from a private source for the

performance of his or her public duties or because of the office or position he or she holds (*R.S. 42:1111 and R.S. 42:1115*).

There are certain specific exceptions. For example, a legislator may receive promotional items having no substantial resale value. A legislator may also consume food, drink, or refreshments and receive "reasonable transportation" and entertainment incidental thereto while the personal guest of the giver or a representative thereof, although there is a specific dollar limit on the amount food, drink, or refreshments that may be given at a single event (*R.S. 42:1102(22) and 1115.1*). (The limitation on food, drink, and refreshments was \$50 when enacted in 2008, but it is adjusted annually to reflect increases in the Consumer Price Index.)

PROHIBITED CONTRACTS

Certain contractual arrangements between legislators, and certain family members, and public entities are prohibited. For example, the ethics code prohibits a legislator, a member of his or her immediate family, and certain related legal entities from bidding on, entering into, or being in any way interested in any contract, subcontract, or other transaction involving the legislative branch of state government (*R.S. 42:1113(C)*).

The code also generally prohibits a legislator, members of his or her immediate family, and certain related legal entities from entering into contracts with any branch, agency, department, or institution of state government or with the Louisiana Insurance Guaranty Association, the Louisiana Health Insurance Guaranty Association, or any other state quasi public entity created in law (*R.S. 42:1113(D)*). There are several specific exceptions to this prohibition, and for those contracts which are allowed, annual disclosure is required.

Legislators, their spouses, and certain related legal entities are also prohibited from entering into certain contracts involving disasters or emergencies. There are specific exceptions to the prohibition, but any person covered by the law (and his or her immediate family members and certain related legal entities) who receives any thing of economic value from such a contract is required to file a disclosure statement with the Board of Ethics containing certain information about the contract. The initial statement must be filed within 30 days after entering into the contract, and annual statements must be filed thereafter (*R.S. 42:1114.3*).

FINANCIAL DISCLOSURE

All elected officials must file annual financial disclosure statements with the Board of Ethics. The law generally requires disclosure of specific information for the filer and his or her spouse regarding occupation, employment, business associations, income, property interests, investments, purchases and sales, and creditors. The statement is due by May 15 of each year and covers the previous calendar year (legislators and certain other elected officials may file the statement later if an extension for filing a federal tax return is obtained and the official

notifies the Board of Ethics of this fact by May 15) (*R.S. 42:1124.2*). The Board of Ethics has promulgated forms that must be used for annual financial disclosure.

In addition to annual financial disclosure, a legislator and any member of his immediate family who derives any thing of economic value directly through any transaction involving the legislative branch, or who derives any thing of economic value of which he may be reasonably expected to know through a person who has bid on or entered into or who is in any way financially interested in any contract, subcontract, or any transaction involving the legislative branch, must disclose the amount of income or value derived, the nature of the business activity, and, as applicable, the name and address and relationship to the legislator, and the name and business address of the legal entity. This report is due to the Board of Ethics no later than the first of May each year (*R.S. 42:1114*).

PAYMENTS FROM NONPUBLIC SOURCES

A legislator is generally limited to receiving only compensation and benefits to which he is duly entitled from the appropriate governmental entity for performance of the duties of his office. Restrictions, and in some cases prohibitions, are placed upon receiving payments from nonpublic sources. For example, an elected official is prohibited from receiving or agreeing to receive any thing of economic value for assisting a person in a transaction or in an appearance in connection with a transaction with the governmental entity or its officials or agencies unless he files a sworn written statement with the Board of Ethics prior to or within 10 days after initial assistance is rendered. For legislators, the term "governmental entity" means the state (*R.S. 42:1111*).

No legislator may receive any thing of economic value for any service, the subject matter of which: (1) is devoted substantially to the responsibilities, programs, or operations of the agency of the legislator and in which the legislator has participated or (2) draws substantially upon official data or ideas which have not become part of the body of public information.

No legislator and no legal entity in which the legislator exercises control or owns an interest in excess of 25% may receive any thing of economic value for or in consideration of services rendered, or to be rendered, to or for any person during his public service unless such services are: (1) bona fide and actually performed by the legislator or by the entity; (2) not within the course of his official duties; (3) not prohibited by provisions relative to transactions in which the legislator or certain affiliated persons has an interest (see *R.S. 42:1112*), or by applicable laws or regulations governing nonpublic employment for such legislator; and (4) neither performed for nor compensated by any person who has or is seeking to obtain a contractual or other business or financial relationship with the legislator's agency. There is a limited

exception for a certain period of time for the completion of contracts entered into prior to election provided that certain requirements are met (see *R.S. 42:1111*).

**TRANSACTIONS
INVOLVING THE
GOVERNMENTAL
ENTITY**

A legislator is prohibited from participating in certain transactions involving the governmental entity in which he or specified other persons have an interest. A legislator must recuse himself from voting on matters which may constitute a conflict of interest. However, the legislator may participate in discussion and debate if he or she makes the disclosure of his conflict or potential conflict a part of the record prior to such participation and prior to the vote that is the subject of the discussion or debate (*R.S. 42:1112 and 1120*).

**PROHIBITIONS
FOLLOWING
PUBLIC SERVICE**

For a period of two years following the termination of his elected public service a legislator is prohibited from assisting another person for compensation in a transaction or in an appearance in connection with a transaction involving the legislative branch of state government and from rendering any service on a contractual basis to or for the legislative branch. Also, a legal entity in which a former legislator is an officer, director, trustee, partner, or employee is prohibited for a period of two years following the termination of his or her public service from assisting another person for compensation in a transaction or in an appearance in connection with a transaction in which the legislator at any time participated during his public service and involving the legislative branch. Former legislators are also prohibited from sharing in any compensation received by another person for assistance that the former legislator would be prohibited from rendering (*R.S. 42:1121*).

ABUSE OF OFFICE

Using one's office or position with the intent to compel or coerce someone to provide a thing of economic value to anyone is prohibited. Using one's office or position, directly or indirectly, in a manner intended to compel or coerce any person or other public servant to engage in political activity is also prohibited (*R.S. 42:1116*). There is a corresponding criminal provision (*R.S. 14:134.3*).

**OTHER ETHICAL
STANDARDS**

In addition to the above ethical standards, the code includes provisions prohibiting illegal payments, influencing legislative action, and nepotism. Specific exceptions to the ethics code are found in *R.S. 42:1123*. (Note: In addition to prohibitions in the ethics code, there are other conflict of interest provisions in the law. For example, a legislator is specifically prohibited from employing a member of his or her family as a legislative assistant (*R.S. 24:31.5*)).

PENALTIES

General penalties for elected officials for violations of the ethics code include censure and fines of not more than \$10,000. (*R.S. 42:1153*) There are also late fees that apply to the various reports required to be filed with the Board of Ethics (*R.S. 42:1124.4 and 1157*).

**RELATED
PROVISIONS**

In addition to the ethics code, there are provisions in the Louisiana Gaming Control Law which prohibit certain public officials from engaging in certain business relationships with riverboat gaming licensees and casino operators (*R.S. 27:96 and 261*). Also, Louisiana's Criminal Code defines and prohibits a number of criminal offenses relating to public office and holders of public office. These include: public bribery (*R.S. 14:118*); bribery of voters (*R.S. 14:119*); corrupt influencing (*R.S. 14:120*); public intimidation (*R.S. 14:122*); threatening a public official (*R.S. 14:122.2*); perjury (*R.S. 14:123*); false swearing (*R.S. 14:125*); injuring public records (*R.S. 14:132*); filing false public records (*R.S. 14:133*); malfeasance in office (*R.S. 14:134*); public salary deduction (*R.S. 14:135*); public salary extortion (*R.S. 14:136*); public payroll fraud (*R.S. 14:138*); political payroll padding (*R.S. 14:139*); public contract fraud (*R.S. 14:140*); prohibited splitting of profits, fees, or commissions (*R.S. 14:141*); and bribery of withdrawn candidates (*R.S. 14:352*).

THE LEGISLATOR AND CAMPAIGN FINANCE LAWS

Regulating a Legislator's Campaign Contributions and Expenditures

The Board of Ethics also functions as the Supervisory Committee on Campaign Finance Disclosure. The Campaign Finance Disclosure Act (*R.S. 18:1481 et seq.*) requires reports of campaign contributions and expenditures for candidates and political committees. It also prohibits certain campaign conduct and limits the amounts of campaign contributions. Louisiana law does not use the terms "political action committee" or "PAC"; the terms "committee" and "political committee" are used instead. Depending upon the specific context, committee may mean a candidate's committee (which reports with the candidate) or a committee not established by a candidate that supports or opposes one or more candidates. The latter is informally referred to as a PAC. The discussion below is necessarily brief and does not fully reflect the law. More information regarding the Board of Ethics, including campaign finance reports that have been filed and opinions issued regarding campaign finance matters, can be found on the board's website (www.ethics.state.la.us). (For additional information about campaign finance laws, election offenses, and related provisions contact the staff of the House and Governmental Affairs Committee at (225) 342-2403.)

THREE CATEGORIES OF CANDIDATES

Candidates are divided into three categories: **major office** (statewide, PSC, Supreme Court, BESE, certain other offices in districts with a population over 250,000, and certain specified judicial offices); **district office** (legislature, parishwide and multi-parish offices (except those that are major), offices in districts of over 35,000 population, and certain specified judicial offices), and **any other office**.

REPORTS OF CONTRIBUTIONS AND EXPENDITURES

All contributions and expenditures must be reported, and the report must aggregate them for each contributor or recipient. Therefore, complete records must be kept including the sale of tickets to testimonials or other fundraising events. The records should contain the date, amount, and name and address of each contributor or recipient.

Reports must be filed with the supervisory committee on a statutorily established schedule.

Reports for state legislative office candidates must be filed electronically.

If the candidate's or committee's final report shows a deficit, a supplemental report must be filed by February 15 each year. Generally, this report must be filed annually until the reportable debts and obligations of the campaign have been extinguished.

If the candidate's or committee's final report shows a surplus, a supplemental report must also be filed by February 15 each year until the surplus is disposed of unless the candidate or committee has filed an annual report which includes the surplus funds.

Generally if the candidate has received contributions or made expenditures, an annual report must be filed by February 15 unless the candidate or committee has filed another required report after the preceding December 10th and prior to the February 15th due date.

All reports once filed are available on the board's website (www.ethics.state.la.us).

CONTRIBUTION LIMITS

The Campaign Finance Disclosure Act specifically limits campaign contributions to legislative candidates and their committees to \$2,500, except that for contributions made by political committees certified to have over 250 members, at least 250 of which each contributed at least \$50 to the political committee during the preceding calendar year (informally referred to as "Big PACs"), the limit is \$5,000. There is a list of certified "Big PACs" on the board's website www.ethics.state.la.us. These limits are per election (the primary and general election are separate elections) and do not apply to a candidate's use of his personal funds or any contributions made by a recognized political party or its committees. Legislative candidates may not accept more than \$60,000 in contributions from political committees (other than recognized political parties) for both the primary and general election.

CONTRIBUTION LIMITS/LEGISLATIVE CANDIDATES

	To a legislative candidate or his committee per election ¹
Individual may give ²	\$2,500
Family member of candidate may give	\$2,500
Legal entity may give ³	\$2,500
PAC may give ⁴	\$2,500
Big PAC ⁵ may give ⁴	\$5,000
Democratic or Republican Party or committees may give	No limits

¹ The primary and general elections are considered as two separate elections.

² A husband and wife may each make a contribution to the same candidate up to the limit. However, separate checks should be used. If a single check is signed by one spouse, the other must provide an affidavit as to their intent to share in the contribution.

³ Includes legal entities owned wholly or partially by candidates, except Internal Revenue Code Subchapter S corporations and LLCs wholly owned by the candidate. Parent corporations and their subsidiaries are subject to a single limit. A corporation is a parent if it owns over 50% of another corporation. A wholly owned Subchapter S corporation and its owner and a wholly owned LLC and its owner are subject to a single limit.

⁴ Candidates are also subject to an aggregate limit on the contributions they may accept from all PACs combined for both the primary and general elections. Those limits are: \$80,000 - major office, \$60,000 - district office, and \$20,000 - any other office.

⁵ A PAC with over 250 members, at least 250 of which each contributed over \$50 to the PAC during the

USE OF FUNDS

The campaign finance laws prohibit the personal use of campaign contributions unrelated to a political campaign or to the holding of a public office or a party position. The provisions of the Campaign Finance Disclosure Act specify the purposes for which excess campaign funds may be used.

PROHIBITIONS

There are several prohibitions in the Campaign Finance Disclosure Act. These include:

Contributions through or in the name of another, directly or indirectly.

Expenditures from funds which have been contributed anonymously.

Cash contributions in excess of \$100 during a calendar year (and any cash contribution of \$100 or less must be evidenced by a receipt containing the name, address, social security number, and signature of the contributor).

Contributions from certain persons substantially interested in the gaming industry.

Contributions from foreign nationals.

Use of federal campaign funds by a candidate for state office to support his state candidacy.

Expenditures in excess of \$100 from petty cash and expenditures from petty cash for any personal services except gratuities for the serving of food or drink.

Contributions by a candidate to any committee required to file an annual statement of organization that has not filed such a statement.

Giving or accepting any thing of economic value, including reimbursement, for conveying an elector to a polling place to vote.

Accepting or depositing a contribution, loan, or transfer of funds during a regular session when running for a state legislative office, unless the election is to occur during the session or within 60 days after adjournment.

Expenditure of funds derived from contributions for any purpose by a candidate or his principal or subsidiary campaign committee so long as the candidate owes a fine, fee, or penalty imposed by a final order of a court or the supervisory committee pursuant to the Campaign Finance Disclosure Act and against which all appeal delays have lapsed.

Use of campaign funds to pay any fine, fee, or penalty imposed pursuant to the Code of Governmental Ethics.

Use of campaign funds to make any payment or expenditure to any immediate family member of the candidate, with certain limited exceptions.

RELATED PROVISIONS

Though not part of the Campaign Finance Disclosure Act the following related provisions should also be noted:

Fundraising Functions During Legislative Sessions

As noted previously, accepting or depositing contributions during a regular session is generally prohibited by the Campaign Finance Disclosure Act when running for a state legislative office. However, if a legislator is not running for a state legislative office, or if the election is to occur during the session or within 60 days after adjournment, the legislator must give prior written notice to the Board of Ethics in order to have a fundraising function during

a regular legislative session. In addition, prior written notice must be given to the Board of Ethics in order to have a fundraising function during an extraordinary session (*R.S. 24:56 and 56.1*).

Election Offenses and other provisions

There are several provisions in the election code, the Code of Governmental Ethics, and other laws which prohibit certain activities related to elections and campaigns. There are prohibitions relative to bribery or intimidation of voters, election officials, and candidates; coercion to engage in various political activities; specified activities relative to fraudulent registration and voting; tampering with election equipment; electioneering; false political material; certain automated campaign calls; specified unethical campaign practices; excessive charges for political advertisements; placement of campaign signs; and use of public funds. (*See R.S. 18:1461 et seq., R.S. 42:1130.1 et seq., and Part VII of Title 14*)

PENALTIES

There are various penalties for violations of these provisions ranging from per day late fees and civil penalties to misdemeanor and felony criminal penalties.

THE LEGISLATOR AND LOBBYIST REGULATION

Laws Governing the Legislator/Lobbyist Relationship

The primary laws regulating legislative lobbying are found at R.S. 24:50 et seq. This summary is necessarily brief and does not fully reflect the law. These statutes provide for the registration of lobbyists, provide for certain reports of their expenditures, and prohibit certain conduct. Only "lobbyists" as defined in the law are regulated. Elected officials and certain specified designees are excluded from the application of the law.

REPORTS

Each lobbyist must electronically file with the Board of Ethics by the 25th of each month a report for the preceeding month detailing all expenditures incurred for the purpose of lobbying.

Expenditure for this purpose means the gift or payment of money or any thing of value for the purchase of food, drink, or refreshment for a legislator, for the spouse or minor child of a legislator, and for any legislative staff member, and any gift or payment as permitted by ethics code exceptions relative to certain specified events (*R.S. 42:1123(13) and (16)*) for the purpose of lobbying when the lobbyist or principal accounts or would be expected to account for the expenditure as an ordinary and necessary expense directly related to the active conduct of the lobbyist's, his employer's, or the principal's trade or business.

Contents. Each report must include:

A listing of each subject matter lobbied during the reporting period.

Total expenditures during the reporting period.

The aggregate total of expenditures attributable to an individual legislator or legislative staff member during the reporting period, including the name of the legislator or staff member.

The aggregate total of expenditures attributable to the spouse or minor child of a legislator during the reporting period, reported as "The aggregate total of expenditures attributable to the spouse of (name of legislator) was (aggregate total of expenditures)" or "The aggregate total of expenditures attributable to minor child or children of (name of legislator) was (aggregate total of expenditures)."

The aggregate total of expenditures for all reporting periods during the same calendar year and the aggregate totals of

expenditures for all reporting periods during the year attributable to a legislator, legislative staff member, and spouse and minor children of a legislator (reported in the same manner as for the reporting period).

A statement of the total expenditures for each reception or social gathering to which the entire legislature, either house, any standing committee, select committee, statutory committee, committee created by resolution of either house, subcommittee of any committee, recognized caucus, or any delegation thereof, is invited, including the name of the group or groups invited and the date and location of the reception or social gathering.

Further, any expenditure for any reception or social gathering sponsored in whole or in part by a lobbyist, individually or on behalf of a principal he represents, held in conjunction with a meeting of a national or regional organization of legislators or legislative staff is reported by including the name of the organization, the date and location of the reception or social gathering, a general description of persons associated with the organization invited to attend, and the amount of the expenditure.

However, any expenditure for any meal or refreshment consumed by or offered to a legislator in connection with the legislator giving a speech, being a member of a panel, or otherwise being involved in an informational presentation to a group is not reportable, except that such types of expenditures for out-of-state speeches permitted by R.S. 42:1123(16) must be reported.